

Amendment No. 1 to Amendment 1 to SB2567

Bowling  
Signature of Sponsor

**AMEND Senate Bill No. 2567**

**House Bill No. 2576\***

by deleting the amendatory language of Section 2 and by substituting instead the following:

SECTION 2. Tennessee Code Annotated, Section 36-3-602, is amended by adding the following language as a new subsection (c) and renumbering the remaining subsection accordingly:

(c)

(1) A temporary order of protection shall be issued against a respondent pursuant to § 36-3-605 if, at the respondent's initial appearance following an arrest for a crime involving domestic abuse, the court finds there is probable cause to believe the respondent either:

(A) Caused serious bodily injury, as defined in § 39-11-106, to the alleged domestic abuse victim; or

(B) Used or displayed a deadly weapon, as defined in § 39-11-106.

(2) The alleged domestic abuse victim does not need to be present at the time the temporary order of protection is issued.

(3) A hearing on whether the temporary order of protection should be dissolved, extended, or modified shall be held within fifteen (15) days of service of the temporary order of protection upon the respondent. The domestic abuse victim shall have the right to notice of the hearing and the right to be present at the hearing. The procedures set forth in § 36-3-605 shall apply.

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(4) The temporary order of protection may include any relief available under an ex parte order of protection issued pursuant to § 36-3-605.

**AND FURTHER AMEND** by deleting the amendatory language of Section 3 and substituting instead the following:

SECTION 3. Tennessee Code Annotated, Section 36-3-619, is amended by adding the following language as a new, appropriately designated subsection:

(1) For good cause shown, the court may issue an ex parte order of protection pursuant to § 36-3-605 upon a sworn petition filed by a law enforcement officer responding to an incident of domestic abuse who asserts in the petition reasonable grounds to believe that a person is in immediate and present danger of abuse, as defined in § 36-3-601, and that the person has consented to the filing in writing; provided, that the person on whose behalf the law enforcement officer seeks the ex parte order of protection shall be considered the petitioner for purposes of this part.

(2) The law enforcement officer may seek on behalf of the person the ex parte order regardless of the time of day and whether or not an arrest has been made.

(3) If an ex parte order is issued pursuant to this section outside of the issuing court's normal operating hours:

(A) The law enforcement officer, judge, or judicial official shall cause the petition and order to be filed with the court as soon as

practicable after issuance, but no later than two (2) business days after issuance; and

(B) The law enforcement officer shall use reasonable efforts to notify the person on whose behalf the petition was filed and provide the person with a copy of the ex parte order as soon as practicable after issuance.

(4) The court shall cause a copy of the petition, a notice of the date set for the hearing, and a copy of the ex parte order of protection to be served upon the respondent in accordance with § 36-3-605(c). A hearing on whether or not the ex parte order of protection should be dissolved, extended, or modified shall be held within fifteen (15) days of service of the order on the respondent. The person who consented to the filing shall be given notice of the hearing and the right to be present at the hearing. The procedures set forth in § 36-3-605 shall apply.

(5) Law enforcement officers shall not be subject to civil liability under this section for failure to file a petition or for any statement made or act performed in filing the petition, if done in good faith.

**AND FURTHER AMEND** by deleting the amendatory language of Section 11 and substituting instead the following:

SECTION 11. Tennessee Code Annotated, Section 40-35-311, is amended by adding the following language as a new subsection:

(f) The court may consider the results of an offender's validated risk and needs assessment in determining the appropriate disposition of the probation violation charge and may request an updated validated risk and needs assessment be performed.

**AND FURTHER AMEND** by deleting Section 14 and substituting instead the following:

SECTION 14. Tennessee Code Annotated, Title 40, Chapter 28, is amended by adding the following language as a new part:

**40-28-701. Definitions.**

As used in this part:

(1) "Chief supervision officer" means the correctional administrator for each region of the state or any other person designated by the commissioner;

(2)

(A) "Community supervision" means:

(i) The placement of a defendant on probation by a court for a specified period during which the sentence is suspended in whole or in part; or

(ii) The placement by the board of parole of an individual on parole after release from prison or jail, with conditions imposed by the board for a specified period; and

(B) "Community supervision" does not mean community supervision for life imposed pursuant to § 39-13-524;

(3) "Court" means a court of record having original criminal jurisdiction;

(4) "Graduated sanction" means any of a wide range of non-prison offender accountability measures and programs, including, but not limited to, electronic supervision tools; drug and alcohol testing or monitoring; day or evening reporting centers; rehabilitative interventions such as substance abuse or mental health treatment; reporting requirements to probation and parole officers; community service or work crews; and residential treatment facilities;

(5) "Positive reinforcement" means any of a wide range of rewards and incentives, including, but not limited to, awarding certificates of achievement, reducing

reporting requirements, removing supervision conditions such as home detention or curfew, or asking the offender to be a mentor to others;

(6) "Probation and parole officer" means a person appointed or employed by the department to supervise individuals placed on community supervision; and

(7) "Supervised individual" means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail for a felony offense.

#### **40-28-702. Policy on Community Supervision.**

Supervised individuals shall be subject to:

(1) Violation revocation proceedings and possible incarceration for failure to comply with the conditions of supervision when such failure constitutes a significant risk to prior victims of the supervised individual or the community at large and cannot be appropriately managed in the community; or

(2) Sanctions other than revocation as appropriate to the severity of the violation behavior, the risk of future criminal behavior by the offender, and the need for, and availability of, interventions which may assist the offender to remain compliant and crime-free in the community.

#### **40-28-703. System of Graduated Sanctions.**

(a) The department shall adopt a single system of graduated sanctions for violations of the conditions of community supervision. The system shall set forth a menu of presumptive sanctions for the most common types of supervision violations, including, but not limited to: failure to report; failure to pay fines and fees; failure to participate in a required program or service; failure to complete community service; and failure to refrain from the use of alcohol or controlled substances. The system of sanctions shall take into account factors such as the severity of the current violation, the supervised individual's previous criminal record, the number and severity of any previous supervision violations,

the supervised individual's assessed risk level, and the extent to which graduated sanctions were imposed for previous violations. The system shall also define positive reinforcements that supervised individuals will receive for compliance with conditions of supervision. The system shall clearly specify as to each type of sanction whether the supervised individual has the option to object and seek administrative review of the sanction.

(b) The department shall establish by policy an administrative process to review and approve or reject, prior to imposition, graduated sanctions that deviate from those prescribed.

(c) The department shall establish by policy an administrative process to review graduated sanctions contested by supervised individuals under § 40-28-705. The review shall be conducted by the chief supervision officer, who shall be impartial and trained to hear cases regarding graduated sanctions for violations of supervision conditions.

(d) The department shall establish and maintain a program of initial and ongoing training regarding the system of graduated sanctions for probation and parole officers.

#### **40-28-704. Conditions of Community Supervision.**

For individuals placed on supervised probation, the judge of the court having jurisdiction over the case shall determine the conditions of community supervision, which shall include as a condition that the department supervising the individual may, in accordance with § 40-28-705, impose graduated sanctions adopted by the department for violations of the conditions of community supervision.

#### **40-28-705. Authority to Impose Graduated Sanctions.**

(a) Notwithstanding any rule or law to the contrary, the department may impose graduated sanctions.

(b) A probation and parole officer intending to impose a graduated sanction shall issue to the supervised individual a notice of the intended sanction. The notice shall

inform the supervised individual of the violation or violations alleged, the date or dates of the violation or violations, and the graduated sanction to be imposed.

(c) The imposition of a graduated sanction or sanctions by a probation and parole officer must comport with the system of graduated sanctions adopted by the department under § 40-28-703. Upon receipt of the notice, the supervised individual shall immediately accept the sanction or, if permitted under the system of graduated sanctions, object to the sanction or sanctions proposed by the probation and parole officer. The failure of the supervised individual to comply with a sanction shall constitute a violation of probation, parole, or post-release supervision. If the supervised individual objects to the imposition of the sanction or sanctions, when permitted by the system of graduated sanctions, the individual is entitled to an administrative review to be conducted by the department within five (5) days of the issuance of the notice. If the department affirms the recommendation contained in the notice, the sanction or sanctions shall become effective immediately.

(d)

(1) A notice of a graduated sanction may not be issued for any violation of probation or parole that could warrant an additional, separate felony charge or Class A misdemeanor charge.

(2) Notwithstanding subdivision (d)(1), a notice of a graduated sanction may be issued for a positive drug test.

(e) Upon successful completion of a graduated sanction or sanctions, a court shall not revoke the term of community supervision or impose additional sanctions for the same violation. Notwithstanding this subsection (e), a court may consider an individual's supervision and sanctions history when adjudicating subsequent violations.

(f) The department shall regularly provide notice of sanctions imposed upon probationers to the sentencing court and the prosecutor's office for each jurisdiction.

(g) If a probation and parole officer imposes a graduated sanction, the officer shall:

- (1) Deliver a copy of the sanction to the supervised individual; and
- (2) Note the date of delivery of the copy in the supervised individual's file.

**40-28-706. Monitoring Graduated Sanctions.**

The chief supervision officer shall review confinement sanctions recommended by probation and parole officers on a quarterly basis to assess any disparities that may exist among officers, evaluate the effectiveness of the sanction as measured by the supervised individuals' subsequent conduct, and monitor the impact on the department's number and type of revocations for violations of the conditions of supervision.